



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 25

[IB Docket No. 11-133; FCC 13-50]

Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) modifies the policies and procedures that apply to foreign ownership of common carrier, aeronautical en route and aeronautical fixed radio station licensees. The Commission found that the new measures will reduce regulatory costs and burdens imposed on wireless common carrier and aeronautical applicants, licensees and spectrum lessees, provide greater transparency and more predictability with respect to the Commission's foreign ownership filing requirements and review process, facilitate investment in U.S telecommunications infrastructure and capacity, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, IB Docket No. 11-133, FCC 13-50, adopted April 18, 2013, and released April 18, 2013. The full text of the Second Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554. The document also is available for download over the Internet at http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0418/FCC-13-50A1.pdf. The complete text also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), located in Room CY-B402, 445 12th Street, SW, Washington, DC 20554. Customers may contact BCPI at its web site: <http://www.bcpweb.com> or call 1-800-378-3160.

Summary of Second Report and Order

1. In the Second Report and Order, the Federal Communications Commission (Commission) revises its regulatory framework for authorizing foreign ownership of common carrier radio station licensees – i.e., companies that provide fixed or mobile telecommunications service over networks that employ spectrum-based technologies, either in whole or in part – pursuant to sections 310(b)(3) and 310(b)(4) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 310(b)(3), (4). These new measures will also apply to foreign ownership of aeronautical en route and aeronautical fixed (hereinafter, “aeronautical”) radio station licensees pursuant to section 310(b)(4). The new rules will be codified in 47 CFR 1.907, 1.990-1.994 and 25.105. For ease of reference, the Second Report and Order refers to common carrier and aeronautical radio station applicants, licensees, and spectrum lessees collectively as “licensees”

unless the context warrants otherwise. “Spectrum lessees” are defined in 47 CFR 1.9003. The Second Report and Order does not address Commission policies with respect to the application of section 310(b)(4) to broadcast licensees.

2. Section 310(b)(4) of the Act establishes a 25 percent benchmark for investment by foreign individuals, governments, and corporations in U.S.-organized entities that directly or indirectly control a U.S. broadcast, common carrier, or aeronautical radio station licensee. This section also grants the Commission discretion to allow higher levels of foreign ownership of a controlling U.S.-organized parent company – up to and including 100 percent of its equity and voting interests – unless the Commission finds that such ownership is inconsistent with the public interest. Section 310(b)(3) of the Act prohibits foreign individuals, governments, and corporations from owning more than 20 percent of the capital stock of a broadcast, common carrier, or aeronautical radio station licensee. In the First Report and Order in this docket (77 FR 50628, August 22, 2012) the Commission determined to forbear, under section 10 of the Act, 47 U.S.C. 160, from applying the 20 percent foreign ownership limit in section 310(b)(3) to the class of common carrier licensees in which the foreign investment is held through U.S.-organized entities that do not control the licensee, to the extent the Commission determines such foreign ownership is consistent with the public interest under the policies and procedures the Commission uses for assessing foreign ownership under section 310(b)(4). The Commission deferred to this second phase of the proceeding a decision whether to apply any changes it adopts to the section 310(b)(4) regulatory framework to its analysis of petitions for declaratory ruling or similar filings under the Commission’s section 310(b)(3) forbearance approach. The Commission’s forbearance authority under 47 U.S.C. 160 does not extend to broadcast or aeronautical radio stations licensees.

3. The Second Report and Order adopts a comprehensive set of rules that will apply to common carrier and aeronautical radio station licensees that seek approval for the foreign ownership of their controlling U.S.-organized parent companies to exceed the 25 percent foreign ownership benchmark in section 310(b)(4) and to common carrier radio station licensees subject to the section 310(b)(3) forbearance approach that seek Commission approval to exceed the 20 percent foreign ownership limit in section 310(b)(3). The Commission estimates that the new rules will reduce the number of section 310(b) petitions for declaratory ruling filed with the Commission annually in the range of 40 to 70 percent as compared to the current regulatory framework. The Commission also concludes that the new rules will reduce substantially the number of hours that licensees will have to spend in preparing and submitting the petitions that they will need to file under the new rules.

4. The Second Report and Order adopts several of the proposals set forth in the Notice of Proposed Rulemaking (NPRM) as well as other measures that respond to comments filed in this proceeding on the various options and questions raised in the NPRM. The Commission has revised certain of its initial proposals in light of the views of the Executive Branch agencies that filed comments, in order to ensure their continued ability to review proposed foreign investment in advance (through either section 310(b) petitions or license or spectrum lease applications) and assess whether such investment is consistent with national security, law enforcement, foreign policy, and trade policy concerns. Under the new rules, the Commission will continue to coordinate with the relevant Executive Branch agencies all petitions for declaratory ruling and applications for licenses and spectrum leases, and for transfers and assignments thereof, where the applicant has foreign ownership exceeding the limits in section 310(b)(3) and/or section 310(b)(4), and continue to accord deference to the

agencies' views on matters related to national security, law enforcement, foreign policy, and trade policy that may be raised by a particular petition for declaratory ruling or application. The Commission will also maintain its ability to condition or disallow foreign investment that may pose a risk of harm to important national policies.

WTO and Non-WTO Investment

5. The Second Report and Order eliminates the current distinction between foreign investment from World Trade Organization (WTO) Member countries and non-WTO Member countries for purposes of reviewing foreign investment in common carrier and aeronautical licensees. Instead, the Commission will apply an "open entry standard" in its public interest assessment of all foreign investment under the Commission's section 310(b)(3) forbearance approach and under its section 310(b)(4) review. The Second Report and Order finds that, on balance, the costs of maintaining the distinction between WTO and non-WTO Member investment in common carrier and aeronautical licensees outweigh any remaining benefits.

Revised and Codified Standards for Public Interest Determinations

6. Prior Approval of Foreign Ownership Under section 310(b)(3) Forbearance and section 310(b)(4). The Second Report and Order adopts the NPRM proposal to retain and codify the Commission's long-standing policy that requires common carrier and aeronautical radio station licensees to seek and obtain Commission approval before their U.S. parents' foreign ownership exceeds the 25 percent benchmark in section 310(b)(4) of the Act. The Second Report and Order also codifies the same requirement for common carrier licensees subject to section 310(b)(3) forbearance to obtain prior Commission approval before foreign ownership in the subject licensee exceeds the 20 percent limit in section 310(b)(3).

7. Issuing section 310(b)(3) and (b)(4) Rulings to Named Licensees. The Commission determined in the Second Report and Order to continue its practice of issuing foreign ownership rulings in the name of the licensee that is the subject of a petition for declaratory ruling, regardless of whether the ruling authorizes the licensee to have foreign ownership in excess of the 20 percent limit in section 310(b)(3) or authorizes foreign ownership of the licensee's controlling U.S. parent to exceed the 25 percent benchmark in section 310(b)(4). The NPRM had proposed to issue section 310(b)(4) rulings in the name of the licensee's lowest-tier, controlling U.S. parent. The Second Report and Order finds that issuing section 310(b)(3) and section 310(b)(4) rulings in the name of the licensee will help to provide the consistency sought by commenters in the Commission's public interest review of foreign ownership under section 310(b)(3) forbearance and section 310(b)(4).

8. Approval of Named Foreign Investors. The rules adopted in the Second Report and Order will require common carrier and aeronautical licensees to identify and request specific approval in their section 310(b)(4) petitions for declaratory ruling for any foreign individual or entity, or "group" of foreign individuals or entities, that holds or would hold directly, and/or indirectly through one or more intervening U.S.- or foreign-organized entities, more than five percent of the U.S. parent's total outstanding capital stock (equity) and/or voting stock, or a controlling interest in the U.S. parent. (See § 1.991(i)(1).) The Second Report and Order also adopts a five percent identification and specific approval requirement for common carrier licensees subject to section 310(b)(3) forbearance. (See § 1.991(i)(2)). In certain limited circumstances, however, the Commission will presumptively require identification and specific approval of a foreign investor's non-controlling interest only when it would exceed, directly and/or indirectly, ten percent of the equity and/or voting interests of a U.S. parent (for section

310(b)(4) petitions) or licensee (for petitions filed under section 310(b)(3) forbearance). The Commission will presume, subject to rebuttal in a particular case, that a non-controlling foreign interest of ten percent or less in a U.S. parent or licensee is exempt from the five percent specific approval requirement in the circumstances specified in § 1.991(i)(3)(ii)(A)-(C).

9. The Non-Controlling 49.99 Percent Approval Option for Named Foreign Investors. The Second Report and Order adopts the proposed non-controlling 49.99 percent approval option with certain modifications to accommodate the Commission's forbearance decision in the First Report and Order. Section 1.991(k) of the new rules will allow common carrier and aeronautical licensees to request advance approval for any named foreign investor to increase, at some future time, its equity and/or voting interest held directly or indirectly in the licensee's controlling U.S. parent from existing levels (or levels that would exist upon closing of any transactions contemplated by the petition) up to any non-controlling amount, not to exceed 49.99 percent. Section 1.991(k) will similarly permit common carrier licensees subject to section 310(b)(3) forbearance to request specific approval of any named foreign investor to increase, at some future time its equity and/or voting interest in the licensee, held through intervening U.S. entities that do not control the licensee, from existing levels (or levels that would exist upon closing of any transactions contemplated by the petition) up to any non-controlling amount, not to exceed 49.99 percent. As proposed, the rule will permit the licensee to request such approval for named foreign investors to acquire on a going-forward basis up to and including a non-controlling 49.99 percent interest – even if the aggregate of such interests would exceed 100 percent.

10. The 100 Percent Approval Option for Controlling Foreign Investors. The Second Report and Order adopts the proposed 100 percent approval option for foreign investors that seek

to hold a controlling interest in the controlling U.S. parent of a common carrier or aeronautical radio licensee. The Commission clarifies that the rule, as adopted, will apply only to section 310(b)(4) petitions filed in connection with applications for an initial license or spectrum leasing arrangement as well as applications for consent to assign or transfer control of a license or spectrum leasing arrangement. Thus, where the controlling U.S. parent of the licensee or spectrum lessee named in the application is controlled (in the case of an initial application), or would be controlled (in the case of a transfer/assignment application) by a foreign individual, entity or “group,” § 1.991(k) will allow the petitioner to request advance approval for the controlling foreign investor or group to increase its equity and/or voting interests at some future time, up to any amount, including 100 percent, to the extent the controlling foreign investor’s interests at the time of filing the petition and application are less than 100 percent.

11. The Aggregate Allowance for Unnamed Foreign Investors. Section 1.994(a) of the new rules will provide that, in addition to the foreign ownership interests approved specifically in the licensee’s section 310(b)(4) ruling, the controlling U.S. parent named in the ruling (or a U.S.-organized successor-in-interest formed as part of a pro forma reorganization) may be 100 percent owned directly, and/or indirectly through one or more U.S- or foreign-organized entities, on a going-forward basis (i.e., after issuance of the ruling) by other foreign investors without prior Commission approval. The aggregate allowance for unnamed foreign investors will be subject to the requirement that the licensee seek and obtain Commission approval before any foreign individual, entity, or “group” not previously approved acquires, directly and/or indirectly, more than five percent of the U.S. parent’s outstanding capital stock (equity) and/or voting stock (or more than ten percent, where the criteria for exclusion in § 1.991(i)(3)(ii)(A)-(C) are satisfied), or a controlling interest.

12. Similarly, for common carrier licensees that have received a ruling under the Commission's section 310(b)(3) forbearance approach, § 1.994(b) will provide that, in addition to the foreign ownership interests approved specifically in the licensee's ruling, the licensee may be 100 percent owned on a going forward basis by other foreign investors holding interests in the licensee through U.S.-organized entities that do not control the licensee without prior Commission approval. The aggregate allowance for unnamed investors will be subject to the requirement that the licensee seek and obtain Commission approval before any foreign individual, entity, or "group" not previously approved acquires directly, and/or indirectly through one or more U.S.-organized entities that do not control the licensee, more than five percent of the licensee's outstanding capital stock (equity) and/or voting stock. The five percent prior approval requirement will not apply to any foreign investor that acquires an equity and/or voting interest of ten percent or less, provided that the interest satisfies the criteria for exclusion in § 1.991(i)(3)(ii)(A)-(C). Section 1.994(a)(2) specifies that foreign ownership interests held directly in the licensee shall not be permitted to exceed an aggregate 20 percent of the licensee's equity and/or voting interests.

13. The Commission also determined in the Second Report and Order that licensees may find it necessary or desirable to file a petition to exceed the foreign ownership limits in sections 310(b)(3) and/or (b)(4) in circumstances where no foreign investor holds or proposes to acquire, at the time the petition is filed, an interest that would require specific approval under the new rules – particularly where the licensee or U.S. parent is, or is owned in whole or in part, by a public company. Accordingly, the new rules will permit licensees to file petitions for declaratory ruling requesting approval to exceed the foreign ownership limits in section 310(b)(3) and/or section 310(b)(4) in circumstances where the licensee is not required to, and otherwise does not

choose to, request specific approval for any named foreign investor. The standard terms and conditions in § 1.994 of the new rules, including the 100 percent aggregate allowance, will apply to Commission grant of such petitions unless the Commission finds it necessary to specify otherwise in a particular ruling.

14. The Commission emphasizes that, under the new rules, licensees that have received a foreign ownership ruling will still have an obligation to monitor and stay ahead of changes in foreign ownership to ensure that the licensee obtains Commission approval before such a change renders the licensee out of compliance with its ruling(s) or the Commission's rules. Thus, as is the case under the current regulatory framework, licensees, their controlling parent companies, and other entities in the licensee's vertical ownership chain may also need to place restrictions in their bylaws or other organizational documents to enable the licensee to ensure such continued compliance with the terms of its ruling. The Commission notes that stock ownership restrictions are a common means of ensuring compliance with the foreign ownership limitations in section 310(b) of the Act and other federal statutory provisions that restrict foreign ownership of U.S. companies and assets. (See § 1.994(a), Note to paragraph (a)).

15. Expanding Beyond Carrier-Specific Rulings. The Commission will issue foreign ownership rulings to cover all of the petitioning licensee's subsidiaries and affiliates, whether existing at the time the ruling is issued or formed or acquired subsequently, provided that foreign ownership of the licensee and its subsidiaries and affiliates that are relying on the licensee's ruling remains within the parameters of the ruling and the new rules. (See § 1.994(b).)

16. Section 1.990(d)(10) of the new rules will define "subsidiary" as any entity in which the licensee holds, directly or indirectly, more than 50 percent of the total voting power of the outstanding voting stock of the entity, where no other individual or entity has de facto

control. Section 1.990(d)(2) will define “affiliate” as any entity that is under common control with the licensee, again defined by reference to the holder, directly or indirectly, of more than 50 percent of total voting power, where no other individual or entity has de facto control. Once a licensee has received a foreign ownership ruling, any “subsidiary” or “affiliate” of the licensee, as so defined, will not be required to file a petition for declaratory ruling in connection with its own common carrier or aeronautical license applications, but can instead rely on the licensee’s ruling, provided that the foreign ownership of the licensee and its subsidiary or affiliate complies with the terms and conditions of the licensee’s foreign ownership ruling and the new rules. Compliance will require that the licensee and any subsidiary or affiliate obtain Commission approval before any previously unapproved foreign investor acquires an ownership interest in the licensee or subsidiary/affiliate in excess of the five percent (or ten percent) limits established in the new rules. The rules will require the subsidiary or affiliate to state in its application the name of the affiliated licensee that has received a ruling(s), provide a citation to the ruling(s), and attach to the application a certification, signed by the applicant and licensee (or by a controlling parent company), stating that the applicant and licensee are in compliance with the terms and conditions of the licensee’s foreign ownership ruling(s) and the requirements of the rules.

17. Section 1.990(c)(2) will require that all affiliated entities that contemporaneously hold, or are filing applications for, common carrier or aeronautical licenses or common carrier spectrum leasing arrangements, and that would have foreign ownership exceeding the limits in section 310(b)(3) and/or section 310(b)(4), be named as joint petitioners in a petition for declaratory ruling seeking approval for the affiliated entities’ foreign ownership. To the extent an affiliated entity does not contemporaneously hold, or is not filing an application for, a covered license or spectrum leasing arrangement, it need not be named as a joint petitioner. If the entity

later files a covered application — after issuance of a ruling to an affiliate — § 1.994(b) will permit the entity to rely on the affiliate’s ruling for purposes of filing its own applications.

18. Introducing New Foreign-Organized Entities into the Vertical Ownership Chain. The Commission we will issue foreign ownership rulings to permit, without prior Commission approval, the insertion of new, controlling foreign-organized companies in the vertical ownership chain above the controlling U.S. parent of a common carrier or aeronautical radio station licensee, under section 310(b)(4), or above a U.S.-organized entity that does not control the common carrier licensee, under section 310(b)(3) forbearance. (See § 1.994(c).) Authorization under this rule will require any new foreign-organized companies to be under 100 percent common ownership and control with the controlling foreign parent of the licensee’s controlling U.S. parent, under section 310(b)(4), or with the controlling foreign parent of the U.S.-organized entity that does not control the licensee, under section 310(b)(3) forbearance, for which the licensee has received prior approval.

19. The Commission will also issue foreign ownership rulings to permit, without prior Commission approval, the insertion of new, non-controlling foreign-organized companies in the vertical ownership chain above the controlling U.S. parent of a common carrier or aeronautical radio station licensee, under section 310(b)(4), or above a U.S.-organized entity that does not control the common carrier licensee, under section 310(b)(3) forbearance. (See § 1.994(d).) Authorization under this rule will require any new, foreign-organized companies to be under 100 percent common ownership and control with a previously approved foreign investor. To the extent a licensee subject to section 310(b)(3) forbearance obtains specific approval in its ruling of a foreign investor’s direct ownership interest in the licensee (subject to the 20 percent aggregate limit on direct foreign investment), the rules will also permit the licensee to insert,

without prior Commission approval, a new foreign-organized entity in the vertical ownership chain of the approved foreign investor, provided that any new foreign-organized entity is under 100 percent common ownership and control with the approved foreign investor. (See § 1.994(d), Note to paragraph (d)(1).)

20. The Second Report and Order finds it reasonable to allow these internal reorganizations to proceed without requiring the licensee to return to the Commission for specific approval to insert the new, foreign-organized company in the previously approved vertical ownership chain. The new, foreign-organized company will remain under 100 percent common ownership and control with the previously approved foreign investor. Under other circumstances, the Commission has acknowledged that non-substantial changes in corporate organization merit streamlined treatment. The Commission cautions, however, that while it has previously streamlined or forborne in many situations from enforcement of the separate requirement under section 310(d) of the Act for prior Commission approval of such internal reorganizations that do not involve “a substantial change in ownership or control,” the Commission’s action in the Second Report and Order extends only to its requirements in enforcing the foreign ownership restrictions of section 310(b) and does not eliminate any continuing section 310(d) approval requirements.

21. The new rules will require that licensees file a letter to the attention of the Chief, International Bureau, within 30 days after introduction of a new, foreign-organized entity in the vertical ownership chain above the controlling U.S. parent or licensee certifying that the new, foreign-organized entity complies with the 100 percent common ownership and control requirement and referencing the underlying ruling by the International Bureau Filing System (IBFS) File No. and FCC Record citation, if available. (See §§ 1.994(c)(2), (d)(2).) The

Commission believes that it is important to maintain complete and current records of approved foreign ownership, including the insertion of new, foreign-organized entities in the approved vertical ownership chain above the controlling U.S. parent or licensee. Section 1.994 of the rules will not require such separate notification if the ownership change is instead the subject of a pro forma application or pro forma notification already filed with the Commission via the Universal Licensing System (ULS) (for wireless licensees) or IBFS (for satellite radio licensees).

22. The Commission also stated that applications for consent to a spectrum leasing arrangement or for consent to a transfer of control or assignment of licenses or spectrum leasing arrangements filed by a licensee's subsidiaries or affiliates will not be eligible for the Commission's immediate approval or immediate processing procedures in §§ 1.9020(e), 1.9030(e), 1.9035(e) and 1.948(j). The Commission noted that such procedures do not provide an opportunity for Commission or Executive Branch agency review prior to grant of an eligible application. The applications are granted upon filing and, thus, there is no public notice of the application or opportunity for the filing of comments or oppositions.

23. Service- and Geographic-Specific Rulings. The Second Report and Order eliminates the current practice of issuing foreign ownership rulings on a service-specific and geographic-specific basis. This change in practice will apply to petitions filed under the Commission's section 310(b)(3) forbearance approach and under section 310(b)(4). Under the current regulatory framework, foreign ownership rulings typically cover only the particular wireless service(s) referenced in the petition for declaratory ruling, and the scope of the ruling may also be limited to the geographic service area of the licenses or spectrum leasing arrangements referenced in the petition. As a result, although the ruling authorizes the foreign ownership of the licensee, the licensee is required to file additional petitions for declaratory

ruling to “extend” its existing ruling to cover licenses or spectrum leasing arrangements in different services and/or in different geographic service areas. Industry commenters supported eliminating service- and geographic-specific rulings, while the Department of Justice (DOJ) and the Department of Homeland Security (DHS) supported continuing the practice.

24. In determining to eliminate the practice, the Commission finds that it and the relevant Executive Branch agencies will have sufficient opportunities during the licensing process to consider whether a licensee’s proposed expansion of service or coverage area raises concerns with respect to national security, law enforcement, foreign policy and trade policy due to the licensee’s foreign ownership. The agencies will have the opportunity to raise any concerns with respect to a licensee’s acquisition of new licenses during the section 308 licensing process (see 47 U.S.C. 308) or, in the case of the acquisition of licenses by assignment or transfer of control, during the section 310(d) proceeding (see 47 U.S.C. 310(d)).

25. The Commission also stated that it will maintain the current requirement that applicants with foreign ownership exceeding the section 310(b) limits will qualify for the immediate approval and immediate processing procedures in §§ 1.9020(e), 1.9030(e), 1.9035(e), and 1.948(j) only where the applicant is able to certify in its application that it has already received a service-specific and geographic-specific ruling that covers the spectrum leasing arrangements or licenses that are the subject of the application and that there has been no change in its foreign ownership in the meantime. Thus, unless an applicant has already received a foreign ownership ruling for the same wireless service in the same geographic service area specified in its application for consent to a spectrum leasing arrangement, or for consent to a transfer or assignment of licenses or spectrum leasing arrangements (e.g., the application involves a request only for additional spectrum in the same service(s) and the same area(s)), the

application will not be eligible for immediate approval or processing. The Commission makes no change to its rules in this respect because, as discussed above, such procedures do not provide an opportunity for Commission or Executive Branch review prior to grant of an eligible application. These applications are granted upon filing and, thus, there is no public notice of the application or opportunity for the filing of comments or oppositions.

Contents of Petitions for Declaratory Ruling

26. Information on Disclosable Interest Holders and Foreign Investor Interests. The Second Report and Order adopts the ten percent ownership disclosure threshold proposed in the NPRM. (See § 1.991(e), (f).) Specifically, all section 310(b)(4) petitions for declaratory ruling must contain the name, address, citizenship, and principal business(es) of any individual or entity, regardless of citizenship, that directly or indirectly holds or would hold, after effectuation of any planned ownership changes described in the petition, at least ten percent of the equity or voting interests in the controlling U.S. parent of a common carrier or aeronautical radio station licensee or a controlling interest. Petitions for declaratory ruling filed by common carrier licensees subject to section 310(b)(3) forbearance must contain the same information for any individual or entity, regardless of citizenship, that directly or indirectly holds or would hold, after effectuation of any planned ownership changes described in the petition, at least ten percent of the equity or voting interests in the common carrier licensee. Petitioners will also be required to provide the percentage of equity and voting interest held or to be held by each such “disclosable interest holder” (to the nearest one percent). The ten percent ownership disclosure requirement is consistent with the ownership disclosure requirements that currently apply to most common carrier applicants under the Commission’s licensing rules. The Commission also finds that submission of such ownership information is necessary to verify the principal stakeholders and

ultimate control of the U.S. parent company of a common carrier or aeronautical licensee, in the case of section 310(b)(4) review, and in a common carrier licensee, in the case of petitions filed under the Commission's section 310(b)(3) forbearance approach, and that requiring its submission would impose a minimal burden on petitioners.

27. The Commission will also require petitions to include a percentage estimate of the licensee's and/or U.S. parent's aggregate direct and indirect foreign equity and voting interests, a general description of the methods used to determine the percentages, and a statement addressing the circumstances that prompted the filing of the petition for declaratory ruling and demonstrating that the public interest would be served by grant of the petition. (See § 1.991(h)(1).) The Commission will require petitioners to describe the ownership and control structure of the U.S. parent, under section 310(b)(4), and of the common carrier licensee, under its section 310(b)(3) forbearance approach, including an ownership diagram and identification of the real party-in-interest disclosed in any companion licensing or spectrum leasing applications. (See § 1.991(h)(2).) The Commission finds that requiring an ownership diagram will impose a minor burden on petitioners which will be more than offset by the significant benefits that will accrue to the Commission in processing petitions as expeditiously as possible.

28. The Commission also adopts the proposal in the NPRM that section 310(b)(4) petitions include ownership information for each foreign individual or entity for which the petition seeks specific approval: specifically, their names, citizenship, principal businesses, and the percentage of equity and/or voting interest held or to be held by the foreign investor (to the nearest one percent). This same requirement will apply to petitions for declaratory ruling filed by common carrier licensees subject to section 310(b)(3) forbearance. (See § 1.991(j).) Where the named foreign investor is a corporation or other business entity, the petition shall identify

each of the named foreign investor's direct or indirect ten percent interest holders, specifying each by name, citizenship, principal businesses, and percentage of equity and/or voting interest held in the named foreign investor. This ownership information is necessary for the Commission to verify the identity and ultimate control of the foreign investor for which the petitioner seeks specific approval.

29. Methodology for Calculating Disclosable Interests and Foreign Investor Interests. The NPRM requested comment on whether the insulation standard used to calculate limited partnership interests in U.S. parents of common carrier and aeronautical licensees "is sufficient to support a presumption that an insulated limited partner will not be materially involved in managing partnership affairs." It also sought comment on whether the same principles should govern its consideration of limited liability companies (LLCs) and limited liability partnerships (LLPs). No comments were submitted on either of these issues, and, in the absence of any comments, the Commission declined to revise its current insulation standard, which applies to limited partnership interests held in a common carrier or aeronautical licensee or its U.S. parent, or in any intermediate entity in their vertical chains of ownership.

30. The Commission clarifies in the Second Report and Order, however, the insulation, or "active involvement," standard. The Commission will treat an interest as insulated only where the governance documents of the limited partnership prohibit the limited partner from becoming actively involved in the management or operation of the partnership and limit the limited partner's voting or consent rights to the investor protections set forth in § 1.993 of the new rules. Notwithstanding the inclusion of such limitations, a petitioner shall not treat a limited partner as insulated if the U.S. parent or licensee has actual knowledge of material involvement by the limited partner. The Commission will maintain the current policy that treats an insulated

limited partner as having a voting interest in the limited partnership that is equal to its equity interest.

31. The Commission will apply to LLCs and LLPs the same principles that it is adopting for the calculation of voting interests in limited partnerships. Thus, for example, where a foreign investor holds an interest indirectly in the U.S. parent of a common carrier or aeronautical licensee through an intervening LLC, and the investor is effectively insulated from active involvement in the affairs of the LLC, the U.S. parent may apply the multiplier in calculating the foreign investor's voting interest as well as its equity interest in the U.S. parent. An ownership interest in an LLC or LLP will be treated as insulated where the governance documents of the LLC or LLP prohibit the interest holder from becoming actively involved in the management or operation of the LLC or LLP and limit the holder's voting or consent rights to the investor protections in § 1.993 of the new rules. Notwithstanding the inclusion of such limitations, a petitioner shall not treat the interest holder as insulated if the U.S. parent or licensee has actual knowledge of material involvement by the interest holder. Consistent with the media ownership rules, the Commission finds no basis in the record of this proceeding to differentiate between these alternative forms of business association for purposes of calculating voting interests held in common carrier and aeronautical licensees and their U.S. parent companies.

32. The Commission further finds it reasonable to rely on a petitioner's certification that the petitioner has calculated the ownership interests disclosed in its petition based upon its review of the Commission's rules and that the interests disclosed satisfy each of the pertinent standards and criteria required by the rules. The Commission relies on certifications of compliance with its rules in numerous licensing and related contexts, including compliance with

the foreign ownership limitations in section 310(b), reporting of disclosable interest holders under common carrier licensing rules, and disclosure of attributable interests under the media ownership rules. The Commission therefore includes in § 1.991 of the new rules a provision allowing petitioners to certify to compliance with the Commission's ownership disclosure rules in their section 310(b) petitions for declaratory ruling.

33. Other Content Requirements. As discussed above, § 1.990(c)(2) will require applicants, licensees, and spectrum lessees to file a joint petition for declaratory ruling where the entities are under common control and contemporaneously hold, or are contemporaneously filing applications for, common carrier or aeronautical licenses or spectrum leasing arrangements. This rule also provides that, where the joint petitioners have different disclosable interest holders and/or request specific approval for different foreign investors, such information should be set out separately for each joint petitioner. In addition, § 1.991(d) will require all petitioners to state whether they request a ruling under the Commission's section 310(b)(3) forbearance policy and/or under section 310(b)(4). The Commission also modified § 1.991, as proposed in the NPRM, to eliminate the requirement that petitions list all of a petitioning licensee's or lessee's call signs and spectrum leasing file numbers.

Filing and Processing of Petitions for Declaratory Rulings

34. The Second Report and Order maintains the Commission's current "streamlined" procedures for processing section 310(b)(4) petitions and the existing categories of section 310(b)(4) petitions subject to streamlined processing. The Commission will also apply the same procedures to the processing of petitions for declaratory ruling under its section 310(b)(3) forbearance approach. Thus, petitions for declaratory ruling that also involve an assignment of license or a transfer of control or any initial licensing applications, which involve service-

specific rules and other portions of Title III of the Act, will not be eligible for “streamlined” processing. In addition, Commission staff retains the discretion to deem a petition ineligible for streamlined processing either because it raises market power concerns or because an Executive Branch agency raises concerns with respect to issues within its expertise. Petitions that are eligible for streamlined processing have a 14-day public notice period and, unless a formal opposition is filed or the petition is removed from streamlined processing at the discretion of Commission staff, they are granted automatically, effective on the 15th day after public notice. Petitions that are not eligible for streamlined processing have a 28-day public notice period. Non-streamlined petitions and petitions that are removed from streamlined processing within the 14-day public notice period are granted by public notice or order.

35. The Second Report and Order additionally provides guidance as to a licensee’s obligation to obtain a section 310(b)(3) ruling when it has already received a section 310(b)(4) ruling and vice versa. The Commission stated that, where a common carrier licensee obtains a section 310(b)(4) ruling to allow foreign ownership of its U.S. parent to exceed 25 percent, but then seeks to accept foreign investment that would be held in the licensee through U.S.-organized entities that do not control the licensee, the licensee must file a petition for declaratory ruling under its section 310(b)(3) forbearance approach before such additional foreign interests, aggregated with any foreign interests held directly in the licensee, exceed 20 percent of the licensee’s equity and/or voting interests. Conversely, where the licensee first obtains a foreign ownership ruling under the Commission’s section 310(b)(3) forbearance approach and then, for example, a foreign-organized company seeks to acquire all of the capital stock of the licensee’s controlling U.S. parent, the licensee must file (in conjunction with a section 310(d) transfer of control application) a petition to obtain prior approval for its U.S. parent’s foreign ownership

under section 310(b)(4). (See also § 1.990(a), Example 3.)

Continued Compliance with Section 310(b) Declaratory Rulings

36. The Commission will not require periodic certification of compliance with section 310(b) declaratory rulings, but will require certification whenever a licensee files an application with the Commission for a new license, a transfer of control, or an assignment of license that does not also require the filing of a section 310(b) petition for declaratory ruling. The Commission will also require certification in renewal applications. Such a requirement is sufficient to remind licensees of their obligations, ensure accountability, and inform the Commission and licensees of any potential divergences from their rulings.

37. In addition, the Commission will give deference to requests from DOJ and DHS that the Commission require more frequent certifications as a condition on the granting of a license on a case-by-case basis, where appropriate to address law enforcement or national security concerns. The Commission will make changes to the relevant FCC Forms (Forms 312, 601, 603, and 608) to the extent necessary so that this aspect of the applicant's certification to the information in the application is clear. The Commission also reminded licensees that they have a continuing obligation to monitor their foreign ownership and ensure that they remain compliant with the requirements of the Act, the rules the Commission adopted in the Second Report and Order, and a licensee's particular foreign ownership ruling.

Transition Issues

38. In the Second Report and Order, the Commission did not adopt a rule that changes the terms and conditions of existing foreign ownership rulings issued prior to the effective date of the rules adopted in this proceeding. The Commission stated that, given the

scope of the changes being made to its foreign ownership rules and policies, it is important to afford the Commission and the relevant Executive Branch agencies the opportunity to evaluate the potential effect of applying the new rules in each case where a licensee has already received a ruling. Accordingly, the Commission will permit licensees that have received a ruling prior to the effective date of the new rules to file a new petition for declaratory ruling under the new rules, but the Commission will not require them to do so. The Commission will continue to apply its existing foreign ownership policies and procedures to such licensees within the parameters of their existing rulings. The Commission will also afford them flexibility in the manner in which they request a new ruling from the Commission, should they decide to do so. For example, a licensee could request a new ruling as part of an application for a new license or spectrum leasing arrangement, or an application for consent to a transfer of control or assignment of license. Alternatively, the licensee could file a stand-alone petition for declaratory ruling at any time. The Commission believes this flexibility, and the modified content requirements in the new rules, will minimize the costs and burdens associated with any new filing.

Other Issues

39. Several commenters asked the Commission to amend FCC Form 312 to relieve non-common carrier space station applicants from the requirement to respond to the section 310(b)-related questions in FCC Form 312, because section 310(b) does not apply to non-common carrier radio station licenses. The Commission does not address this issue in the Second Report and Order because the rules applicable to non-common carrier space station applicants are outside the scope of this proceeding.

Paperwork Reduction Act of 1995 Analysis

40. The Second Report and Order does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. The information collection requirements for the section 310(b) foreign ownership approval process are contained in OMB Control No. 3060-1163.¹ In addition, therefore, this document does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Final Regulatory Flexibility Certification

41. The Regulatory Flexibility Act of 1980, as amended (RFA),² requires that a final regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”³ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁴ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁵ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business

¹ The Office of Management and Budget preapproved the information collection requirements at the NPRM stage of this proceeding, and the information collection requirements are adopted with nonsubstantial modification in this Second Report and Order.

² *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104-121, Title II, 110 Stat. 857 (1996).

³ 5 U.S.C. 605(b).

⁴ 5 U.S.C. 601(6).

⁵ 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register.”

Administration (SBA).⁶

42. The Second Report and Order adopts rules that will apply to foreign ownership of common carrier and certain aeronautical radio station applicants, licensees and spectrum lessees (hereinafter referred to collectively as “licensees”). These rules will simplify the policies and procedures the Commission currently applies in reviewing foreign ownership of these licensees’ controlling U.S. parent companies under the discretionary provisions in section 310(b)(4) of the Act, 47 U.S.C. 310(b)(4), while continuing to ensure that we have the information we need to carry out our statutory duties. The new rules will simplify to the same extent the policies and procedures that currently apply to Commission review of foreign ownership in common carrier licensees pursuant to the section 310(b)(3) forbearance policy that the Commission adopted in the First Report and Order in this proceeding. The rules are designed to reduce to the extent possible the regulatory costs and burdens that our current foreign ownership policies and procedures impose on common carrier and aeronautical licensees, including those that are small entities; provide greater transparency and more predictability with respect to the Commission’s filing requirements and review process; and facilitate investment in U.S carriers from new sources of capital, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy.

43. The Commission estimates that the rule changes will reduce the number of section 310(b) petitions for declaratory ruling filed with the Commission annually in the range of 40 to 70 percent as compared to the current regulatory framework. This estimate is based on two reviews done by International Bureau staff. In the first review, based on the 21 section 310(b)(4) petitions filed with the Commission during a randomly-selected period (September 1, 2007

⁶ 15 U.S.C. 632.

through August 31, 2008), staff concluded that adoption of the proposals and other options discussed in the NPRM would result in a more than 70 percent reduction in the number of petitions for declaratory ruling filed with the Commission annually, as compared to the current regulatory framework. In the second review, based on the 13 section 310(b)(4) petitions filed between January 1, 2011 and October 1, 2012, staff concluded that the rules adopted in the Second Report and Order would result in at least a 40 percent reduction. The Second Report and Order notes that a large proportion of the filings during the first review period involved requests by licensees with existing foreign ownership rulings for approval, under section 310(b)(4), to acquire licenses in new wireless services being auctioned. In the second review period, these auctions had been completed and no auction-related petitions were filed. The lack of auction-related filings by licensees with existing foreign ownership rulings during the second review period accounts in large part for the difference between the higher 70 percent reduction figure and the 40 percent reduction figure for the two review periods. Significantly, industry commenters in this proceeding broadly supported elimination of the requirement that licensees with existing rulings return to the Commission for a new ruling when they apply for a license in a new service or geographic service area.

44. The Commission also anticipates a significant reduction in the time and expense associated with filing petitions. For example, licensees filing petitions for declaratory ruling under our section 310(b)(3) forbearance approach or under section 310(b)(4) will no longer be required to demonstrate the percentage of their equity and voting interests that are, or may be, held by investors from non-WTO Member countries. The United States Trade Representative (USTR) commented that this requirement imposes a “non-trivial burden on applicants by requiring them to demonstrate whether foreign investors are from a WTO or non-WTO

Member.” USTR noted that the requirement “also imposes a not insignificant burden on FCC staff to evaluate the information.” As another example, under the new rules licensees filing petitions will no longer be required to include requests for specific approval of named foreign investors unless a foreign investor would hold, in the licensee (in the case of a petition filed under section 310(b)(3) forbearance) or in the U.S. parent (in the case of a petition filed under section 310(b)(4)), an interest exceeding five percent, subject to an exception for certain ten percent interests. Industry commenters generally agree that, under current requirements, companies face significant difficulties and costs in trying to ascertain the citizenship and principal places of business of their investors, which often hold their interests indirectly through multiple investment vehicles and holding companies. USTelecom, for example, describes the Commission’s current requirement as a “tortuous process of identifying each ultimate shareholder.”

45. Although the commenters in this proceeding did not quantify the extent to which current costs and burdens would be reduced by the proposals and other options raised in the NPRM, the qualitative descriptions they provided in the record, and the sheer volume of information that petitioners have had to produce in particular proceedings (and which the Commission has had to analyze in its decisions), leave no doubt that the current requirements impose significant costs and burdens that the new rules will reduce.

46. In summary, the Commission believes that the new rules will reduce costs and burdens currently imposed on licensees, including those licensees that are small entities, and accelerate the foreign ownership review process, while continuing to ensure that the Commission has the information it needs to carry out its statutory duties. Therefore, the Commission certifies that the rules adopted in the Second Report and Order will not have a significant economic

impact on a substantial number of small entities. The Commission will send a copy of this Order, including a copy of this Final Regulatory Flexibility Certification (FRFC), to the Chief Counsel for Advocacy of the SBA.⁷ This final certification will also be published in the Federal Register.⁸

Report to Congress

47. The Commission will send a copy of the Second Report and Order, including this FRFC, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act.⁹ In addition, the Commission will send a copy of the Second Report and Order, including a copy of this FRFC, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and FRFC (or summaries thereof) will also be published in the Federal Register.¹⁰

Ordering Clauses

48. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 10, 303(r), 309, 310, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 160, 303(r), 309, 310 and 403, that this Second Report and Order IS ADOPTED and parts 1 and 25 of the Commission rules ARE AMENDED as set forth in this Second Report and Order. The rule revisions will take effect 30 days after a summary of this Second Report and Order is published in the Federal Register.

49. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center SHALL SEND a copy of this

⁷ 5 U.S.C. 605(b).

⁸ Id.

⁹ See 5 U.S.C. 801(a)(1)(A).

¹⁰ See 5 U.S.C. 604(b).

Second Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

50. IT IS FURTHER ORDERED that this proceeding, IB Docket No. 11-133, IS
HEREBY TERMINATED.

List of Subjects in 47 CFR Parts 1 and 25

Communications common carriers, Radio, Reporting and recordkeeping requirements,
Satellites, Telecommunications.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,
Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 25 as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for part 1 is revised to read as follows:

Authority: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309 and 310, Cable Landing License Act of 1921, 47 U.S.C. 35-39, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96.

2. Section 1.907 is amended by adding definitions for Spectrum leasing arrangement and Spectrum lessee to read as follows:

§ 1.907 Definitions.

Spectrum leasing arrangement. An arrangement between a licensed entity and a third-party entity in which the licensee leases certain of its spectrum usage rights to a spectrum lessee, as set forth in subpart X of this part (47 CFR 1.9001 et seq.). Spectrum leasing arrangement is defined in § 1.9003.

Spectrum lessee. Any third party entity that leases, pursuant to the spectrum leasing rules set forth in subpart X of this part (47 CFR 1.9001 et seq.), certain spectrum usage rights held by a licensee. Spectrum lessee is defined in § 1.9003.

3. Subpart F is amended by adding §§ 1.990 through 1.994 and an undesignated center heading to read as follows:

Subpart F—Wireless Radio Services Applications and Proceedings

* * * * *

Sec.

Foreign Ownership of U.S.-Organized Entities That Control Common Carrier, Aeronautical en Route, And Aeronautical Fixed Radio Station Licensees

1.990 Filing requirements under the Communications Act of 1934.

1.991 Contents of petitions for declaratory ruling under the Communications Act of 1934.

1.992 How to calculate indirect equity and voting interests.

1.993 Insulation criteria for interests in limited partnerships, limited liability partnerships, and limited liability companies.

1.994 Routine terms and conditions.

Foreign Ownership of U.S.-Organized Entities That Control Common Carrier, Aeronautical en Route, and Aeronautical Fixed Radio Station Licensees

§ 1.990 Citizenship and filing requirements under the Communications Act of 1934.

These rules establish the requirements and conditions for obtaining the Commission's prior approval of foreign ownership in common carrier, aeronautical en route, and aeronautical fixed radio station licensees and common carrier spectrum lessees that would exceed the 25 percent benchmark in section 310(b)(4) of the Communications Act of 1934, as amended (47 U.S.C. 310(b)(4)). These rules also establish the requirements and conditions for obtaining the Commission's prior approval of foreign ownership in common carrier (but not aeronautical en

route or aeronautical fixed) radio station licensees and spectrum lessees that would exceed the 20 percent limit in section 310(b)(3) of the Act (47 U.S.C. 310(b)(3)).

(a)(1) A common carrier, aeronautical en route or aeronautical fixed radio station licensee or common carrier spectrum lessee shall file a petition for declaratory ruling to obtain Commission approval under section 310(b)(4) of the Act, and obtain such approval, before the aggregate foreign ownership of any controlling, U.S.-organized parent company exceeds, directly and/or indirectly, 25 percent of the U.S. parent's equity interests and/or 25 percent of its voting interests. An applicant for a common carrier, aeronautical en route or aeronautical fixed radio station license or common carrier spectrum leasing arrangement shall file the petition for declaratory ruling required by this paragraph at the same time that it files its application.

Note 1 to paragraph (a)(1): Paragraph (a)(1) of this section implements the Commission's foreign ownership policies under section 310(b)(4) of the Act (47 U.S.C. 310(b)(4)), for common carrier, aeronautical en route, and aeronautical fixed radio station licensees and common carrier spectrum lessees. It applies to foreign equity and/or voting interests that are held, or would be held, directly and/or indirectly in a U.S.-organized entity that itself directly or indirectly controls a common carrier, aeronautical en route, or aeronautical fixed radio station licensee or common carrier spectrum lessee. A foreign individual or entity that seeks to hold a controlling interest in such a licensee or spectrum lessee must hold its controlling interest indirectly, in a U.S.-organized entity that itself directly or indirectly controls the licensee or spectrum lessee. Such controlling interests are subject to section 310(b)(4) and the requirements of paragraph (a)(1) of this section. The Commission assesses foreign ownership interests subject to section 310(b)(4) separately from foreign ownership interests subject to section 310(b)(3).

(2) A common carrier radio station licensee or spectrum lessee shall file a petition for declaratory ruling to obtain approval under the Commission's section 310(b)(3) forbearance approach, and obtain such approval, before aggregate foreign ownership, held through one or more intervening U.S.-organized entities that hold non-controlling equity and/or voting interests in the licensee, along with any foreign interests held directly in the licensee or spectrum lessee, exceeds 20 percent of its equity interests and/or 20 percent of its voting interests. An applicant for a common carrier radio station license or spectrum leasing arrangement shall file the petition for declaratory ruling required by this paragraph at the same time that it files its application. Foreign interests held directly in a licensee or spectrum lessee, or other than through U.S.-organized entities that hold non-controlling equity and/or voting interests in the licensee or spectrum lessee, shall not be permitted to exceed 20 percent.

Note to paragraph (a)(2): Paragraph (a)(2) of this section implements the Commission's section 310(b)(3) forbearance approach adopted in the First Report and Order in IB Docket No. 11-133, FCC 12-93 (released August 17, 2012), 77 FR 50628 (Aug. 22, 2012). The section 310(b)(3) forbearance approach applies only to foreign equity and voting interests that are held, or would be held, in a common carrier licensee or spectrum lessee through one or more intervening U.S.-organized entities that do not control the licensee or spectrum lessee. Foreign equity and/or voting interests that are held, or would be held, directly in a licensee or spectrum lessee, or indirectly other than through an intervening U.S.-organized entity, are not subject to the Commission's section 310(b)(3) forbearance approach and shall not be permitted to exceed the 20 percent limit in section 310(b)(3) of the Act (47 U.S.C. 310(b)(3)).

Example 1. U.S.-organized Corporation A is preparing an application to acquire a common carrier radio license by assignment from another licensee. U.S.-organized Corporation A is wholly owned and controlled by U.S.-organized Corporation B. U.S.-organized Corporation B is 51 percent owned and controlled by U.S.-organized Corporation C, which is, in turn, wholly owned and controlled by foreign-organized Corporation D. The remaining non-controlling 49 percent equity and voting interests in U.S.-organized Corporation B are held by U.S.-organized Corporation X, which is, in turn, wholly owned and controlled by U.S. citizens. Paragraph (a)(1) of this section requires that U.S.-organized Corporation A file a petition for declaratory ruling to obtain Commission approval of the 51 percent foreign ownership of its controlling, U.S.-organized parent, Corporation B, by foreign-organized Corporation D, which exceeds the 25 percent benchmark in section 310(b)(4) of the Act for both equity interests and voting interests. Corporation A is also required to identify and request specific approval in its petition for any foreign individual or entity, or “group,” as defined in paragraph (d) of this section, that holds directly and/or indirectly more than five percent of Corporation B’s total outstanding capital stock (equity) and/or voting stock, or a controlling interest in Corporation B, unless the foreign investment is exempt under § 1.991(i)(3).

Example 2. U.S.-organized Corporation A is preparing an application to acquire a common carrier radio license by assignment from another licensee. U.S.-organized Corporation A is 51 percent owned and controlled by U.S.-organized Corporation B, which is, in turn, wholly owned and controlled by U.S. citizens. The remaining non-controlling 49 percent equity and voting interests in U.S.-organized Corporation A are held by U.S.-organized Corporation X, which is, in turn, wholly owned and controlled by foreign-organized Corporation Y. Paragraph (a)(2) of this

section requires that U.S.-organized Corporation A file a petition for declaratory ruling to obtain Commission approval of the non-controlling 49 percent foreign ownership of U.S.-organized Corporation A by foreign-organized Corporation Y through U.S.-organized Corporation X, which exceeds the 20 percent limit in section 310(b)(3) of the Act for both equity interests and voting interests. U.S.-organized Corporation A is also required to identify and request specific approval in its petition for any foreign individual or entity, or “group,” as defined in paragraph (d) of this section, that holds an equity and/or voting interest in foreign-organized Corporation Y that, when multiplied by 49 percent, would exceed five percent of U.S.-organized Corporation A’s equity and/or voting interests, unless the foreign investment is exempt under § 1.991(i)(3).

Example 3. U.S.-organized Corporation A is preparing an application to acquire a common carrier radio license by assignment from another licensee. U.S.-organized Corporation A is 51 percent owned and controlled by U.S.-organized Corporation B, which is, in turn, wholly owned and controlled by foreign-organized Corporation C. The remaining non-controlling 49 percent equity and voting interests in U.S.-organized Corporation A are held by U.S.-organized Corporation X, which is, in turn, wholly owned and controlled by foreign-organized Corporation Y. Paragraphs (a)(1) and (2) of this section require that U.S.-organized Corporation A file a petition for declaratory ruling to obtain Commission approval of foreign-organized Corporation C’s 100 percent ownership interest in U.S.-organized parent, Corporation B, and of foreign-organized Corporation Y’s non-controlling, 49 percent foreign ownership interest in U.S.-organized Corporation A through U.S.-organized Corporation X, which exceed the 25 percent benchmark and 20 percent limit in sections 310(b)(4) and 310(b)(3) of the Act, respectively, for both equity interests and voting interests. U.S.-organized Corporation A’s petition also must

identify and request specific approval for ownership interests held by any foreign individual, entity, or “group,” as defined in paragraph (d) of this section, to the extent required by § 1.991(i).

(b) The petition for declaratory ruling required by paragraph (a) of this section shall be filed electronically on the Internet through the International Bureau Filing System (IBFS). For information on filing your petition through IBFS, see part 1, subpart Y and the IBFS homepage at <http://www.fcc.gov/ib>.

(c)(1) Each applicant, licensee, or spectrum lessee filing a petition for declaratory ruling required by paragraph (a) of this section shall certify to the information contained in the petition in accordance with the provisions of § 1.16 and the requirements of this paragraph. The certification shall include a statement that the applicant, licensee and/or spectrum lessee has calculated the ownership interests disclosed in its petition based upon its review of the Commission’s rules and that the interests disclosed satisfy each of the pertinent standards and criteria set forth in the rules.

(2) Multiple applicants and/or licensees shall file jointly the petition for declaratory ruling required by paragraph (a) of this section where the entities are under common control and contemporaneously hold, or are contemporaneously filing applications for, common carrier licenses, common carrier spectrum leasing arrangements, or aeronautical en route or aeronautical fixed radio station licenses. Where joint petitioners have different responses to the information required by § 1.991, such information should be set out separately for each joint petitioner, except as otherwise permitted in § 1.991(h)(2).

(i) Each joint petitioner shall certify to the information contained in the petition in accordance with the provisions of § 1.16 of this part with respect to the information that is pertinent to that petitioner. Alternatively, the controlling parent of the joint petitioners may certify to the information contained in the petition.

(ii) Where the petition is being filed in connection with an application for consent to transfer control of licenses or spectrum leasing arrangements, the transferee or its ultimate controlling parent may file the petition on behalf of the licensees or spectrum lessees that would be acquired as a result of the proposed transfer of control and certify to the information contained in the petition.

(3) Multiple applicants and licensees shall not be permitted to file a petition for declaratory ruling jointly unless they are under common control.

(d) The following definitions shall apply to this section and §§ 1.991 through 1.994.

(1) Aeronautical radio licenses refers to aeronautical en route and aeronautical fixed radio station licenses only. It does not refer to other types of aeronautical radio station licenses.

(2) Affiliate refers to any entity that is under common control with a licensee, defined by reference to the holder, directly and/or indirectly, of more than 50 percent of total voting power, where no other individual or entity has de facto control.

(3) Control includes actual working control in whatever manner exercised and is not limited to majority stock ownership. Control also includes direct or indirect control, such as through intervening subsidiaries.

(4) Entity includes a partnership, association, estate, trust, corporation, limited liability company, governmental authority or other organization.

(5) Group refers to two or more individuals or entities that have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the relevant licensee, controlling U.S. parent, or entity holding a direct and/or indirect equity and/or voting interest in the licensee or U.S. parent.

(6) Individual refers to a natural person as distinguished from a partnership, association, corporation, or other organization.

(7) Licensee as used in §§ 1.990 through 1.994 of this part includes a spectrum lessee as defined in § 1.9003.

(8) Privately held company refers to a U.S.- or foreign-organized company that has not issued a class of equity securities for which beneficial ownership reporting is required by security holders and other beneficial owners under section 13(d) or 13(g) of the Securities Exchange Act of 1934,

as amended, 15 U.S.C. 78a et seq. (Exchange Act), and corresponding Exchange Act Rule 13d-1, 17 CFR 240.13d-1, or a substantially comparable foreign law or regulation.

(9) Public company refers to a U.S.- or foreign-organized company that has issued a class of equity securities for which beneficial ownership reporting is required by security holders and other beneficial owners under section 13(d) or 13(g) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a et seq. (Exchange Act) and corresponding Exchange Act Rule 13d-1, 17 CFR 240.13d-1, or a substantially comparable foreign law or regulation.

(10) Subsidiary refers to any entity in which a licensee owns or controls, directly and/or indirectly, more than 50 percent of the total voting power of the outstanding voting stock of the entity, where no other individual or entity has de facto control.

(11) Voting stock refers to an entity's corporate stock, partnership or membership interests, or other equivalents of corporate stock that, under ordinary circumstances, entitles the holders thereof to elect the entity's board of directors, management committee, or other equivalent of a corporate board of directors.

(12) Would hold as used in §§ 1.990 through 1.994 includes equity and/or voting interests that an individual or entity proposes to hold in an applicant, licensee, or spectrum lessee, or their controlling U.S. parent, upon consummation of any transactions described in the petition for declaratory ruling filed under § 1.990(a)(1) or (2) of this part.

§ 1.991 Contents of petitions for declaratory ruling under the Communications Act of 1934.

The petition for declaratory ruling required by § 1.990(a)(1) and/or § 1.990(a)(2) shall contain the following information:

(a) With respect to each petitioning applicant or licensee, provide its name; FCC Registration Number (FRN); mailing address; place of organization; telephone number; facsimile number (if available); electronic mail address (if available); type of business organization (*e.g.*, corporation, unincorporated association, trust, general partnership, limited partnership, limited liability company, trust, other (include description of legal entity)); name and title of officer certifying to the information contained in the petition.

(b) If the petitioning applicant or licensee is represented by a third party (*e.g.*, legal counsel), specify that individual's name, the name of the firm or company, mailing address and telephone number/electronic mail address.

(c)(1) For each named licensee, list the type(s) of radio service authorized (*e.g.*, cellular radio telephone service; microwave radio service; mobile satellite service; aeronautical fixed service).

(2) If the petition is filed in connection with an application for a radio station license or a spectrum leasing arrangement, or an application to acquire a license or spectrum leasing arrangement by assignment or transfer of control, specify for each named applicant:

(i) The File No(s). of the associated application(s), if available at the time the petition is filed; otherwise, specify the anticipated filing date for each application; and

(ii) The type(s) of radio services covered by each application (*e.g.*, cellular radio telephone service; microwave radio service; mobile satellite service; aeronautical fixed service).

(d) With respect to each petitioner, include a statement as to whether the petitioner is requesting a declaratory ruling under § 1.990(a)(1) and/or § 1.990(a)(2).

(e)(1) Direct U.S or foreign interests of ten percent or more or a controlling interest. With respect to petitions filed under § 1.990(a)(1), provide the name of any individual or entity that holds, or would hold, directly 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the controlling U.S. parent of the petitioning common carrier or aeronautical radio station applicant(s) or licensee(s) as specified in paragraphs (e)(1)(i) through (e)(4)(iv) of this section.

(2) Direct U.S or foreign interests of ten percent or more or a controlling interest. With respect to petitions filed under § 1.990(a)(2), provide the name of any individual or entity that holds, or would hold, directly 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in each petitioning common carrier applicant or licensee as specified in paragraphs (e)(1)(i) through (e)(4)(ii) of this section.

(3) Where no individual or entity holds, or would hold, directly 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the controlling U.S. parent (for petitions filed under § 1.990(a)(1)) or in the applicant or licensee (for petitions filed under § 1.990(a)(2)), the petition shall state that no individual or entity holds or would hold directly 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the U.S. parent, applicant or licensee.

(4)(i) Where a named U.S. parent, applicant, or licensee is organized as a corporation, provide the name of any individual or entity that holds, or would hold, 10 percent or more of the outstanding capital stock and/or voting stock, or a controlling interest.

(ii) Where a named U.S. parent, applicant, or licensee is organized as a general partnership, provide the names of the partnership's constituent general partners.

(iii) Where a named U.S. parent, applicant, or licensee is organized as a limited partnership or limited liability partnership, provide the name(s) of the general partner(s) (in the case of a limited partnership), any uninsured partner(s), and any insulated partner(s) with an equity interest in the partnership of at least 10 percent (calculated according to the percentage of the partner's capital contribution). With respect to each named partner (other than a named general partner), the petitioner shall state whether the partnership interest is insulated or uninsured, based on the insulation criteria specified in § 1.993.

(iv) Where a named U.S. parent, applicant, or licensee is organized as a limited liability company, provide the name(s) of each uninsulated member, regardless of its equity interest, any insulated member with an equity interest of at least 10 percent (calculated according to the percentage of its capital contribution), and any non-equity manager(s). With respect to each named member, the petitioner shall state whether the interest is insulated or uninsulated, based on the insulation criteria specified in § 1.993, and whether the member is a manager.

Note to paragraph (e): The Commission presumes that a general partner of a general partnership or limited partnership has a controlling interest in the partnership. A general partner shall in all cases be deemed to hold an uninsulated interest in the partnership.

(f)(1) Indirect U.S or foreign interests of ten percent or more or a controlling interest. With respect to petitions filed under § 1.990(a)(1), provide the name of any individual or entity that holds, or would hold, indirectly, through one or more intervening entities, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the controlling U.S. parent of the petitioning common carrier or aeronautical radio station applicant(s) or licensee(s). Equity interests and voting interests held indirectly shall be calculated in accordance with the principles set forth in § 1.992.

(2) Indirect U.S or foreign interests of ten percent or more or a controlling interest. With respect to petitions filed under § 1.990(a)(2), provide the name of any individual or entity that holds, or would hold, indirectly, through one or more intervening entities, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the petitioning common carrier radio

station applicant(s) or licensee(s). Equity interests and voting interests held indirectly shall be calculated in accordance with the principles set forth in § 1.992.

(3) Where no individual or entity holds, or would hold, indirectly 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the controlling U.S. parent (for petitions filed under § 1.990(a)(1)) or in the petitioning applicant(s) or licensee(s) (for petitions filed under § 1.990(a)(2)), the petition shall specify that no individual or entity holds indirectly 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the U.S. parent, applicant(s), or licensee(s).

Note to paragraph (f): The Commission presumes that a general partner of a general partnership or limited partnership has a controlling interest in the partnership. A general partner shall in all cases be deemed to hold an uninsured interest in the partnership.

(g) For each 10 percent interest holder named in response to paragraphs (e) and (f) of this section, specify the equity interest held and the voting interest held (each to the nearest one percent); in the case of an individual, his or her citizenship; and in the case of a business organization, its place of organization, type of business organization (*e.g.*, corporation, unincorporated association, trust, general partnership, limited partnership, limited liability company, trust, other (include description of legal entity)), and principal business(es).

(h)(1) Estimate of aggregate foreign ownership. For petitions filed under § 1.990(a)(1), attach an exhibit that provides a percentage estimate of the controlling U.S. parent's aggregate direct

and/or indirect foreign equity interests and its aggregate direct and/or indirect foreign voting interests. For petitions filed under § 1.990(a)(2), attach an exhibit that provides a percentage estimate of the aggregate foreign equity interests and aggregate foreign voting interests held directly in the petitioning applicant(s) and/or licensee(s), if any, and the aggregate foreign equity interests and aggregate foreign voting interests held indirectly in the petitioning applicant(s) and/or licensee(s). The exhibit required by this paragraph must also provide a general description of the methods used to determine the percentages; and a statement addressing the circumstances that prompted the filing of the petition and demonstrating that the public interest would be served by grant of the petition.

(2) Ownership and control structure. Attach an exhibit that describes the ownership and control structure of the applicant(s) and/or licensee(s) that are the subject of the petition, including an ownership diagram and identification of the real party-in-interest disclosed in any companion applications. The ownership diagram should illustrate the petitioner's vertical ownership structure, including the controlling U.S. parent named in the petition (for petitions filed under § 1.990(a)(1)) and the direct and indirect ownership (equity and voting) interests held by the individual(s) and/or entity(ies) named in response to paragraphs (e) and (f) of this section. Each such individual or entity shall be depicted in the ownership diagram and all controlling interests labeled as such. Where the petition includes multiple petitioners, the ownership of all petitioners may be depicted in a single ownership diagram or in multiple diagrams.

(i) Requests for specific approval. Provide, as required or permitted by this paragraph, the name of each foreign individual and/or entity for which each petitioner requests specific approval, if

any, and the respective percentages of equity and/or voting interests (to the nearest one percent) that each such foreign individual or entity holds, or would hold, directly and/or indirectly, in the controlling U.S. parent of the petitioning common carrier or aeronautical radio station applicant(s) or licensee(s) for petitions filed under § 1.990(a)(1), and in each petitioning common carrier applicant or licensee for petitions filed under § 1.990(a)(2).

(1) Each petitioning common carrier or aeronautical radio station applicant or licensee filing under § 1.990(a)(1) shall identify and request specific approval for any foreign individual, entity, or group of such individuals or entities that holds, or would hold, directly and/or indirectly, more than 5 percent of the equity and/or voting interests, or a controlling interest, in the petitioner's controlling U.S. parent unless the foreign investment is exempt under paragraph (i)(3) of this section. Equity and voting interests shall be calculated in accordance with the principles set forth in paragraphs (e) and (f) of this section and in § 1.992.

(2) Each petitioning common carrier radio station applicant or licensee filing under § 1.990(a)(2) shall identify and request specific approval for any foreign individual, entity, or group of such individuals or entities that holds, or would hold, directly, and/or indirectly through one or more intervening U.S.-organized entities that do not control the applicant or licensee, more than 5 percent of the equity and/or voting interests in the applicant or licensee unless the foreign investment is exempt under paragraph (i)(3) of this section. Equity and voting interests shall be calculated in accordance with the principles set forth in paragraphs (e) and (f) of this section and in § 1.992.

Note to paragraphs (i)(1) and (2): Two or more individuals or entities will be treated as a “group” when they have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the licensee and/or controlling U.S. parent of the licensee or in any intermediate company(ies) through which any of the individuals or entities holds its interests in the licensee and/or controlling U.S. parent of the licensee.

(3) A foreign investment is exempt from the specific approval requirements of paragraphs (i)(1) and (2) of this section where:

(i) The foreign individual or entity holds, or would hold, directly and/or indirectly, no more than 10 percent of the equity and/or voting interests of the U.S. parent (for petitions filed under § 1.990(a)(1)) or the petitioning applicant or licensee (for petitions filed under § 1.990(a)(2)); and

(ii) The foreign individual or entity does not hold, and would not hold, a controlling interest in the petitioner or any controlling parent company, does not plan or intend to change or influence control of the petitioner or any controlling parent company, does not possess or develop any such purpose, and does not take any action having such purpose or effect. The Commission will presume, in the absence of evidence to the contrary, that the following interests satisfy this criterion for exemption from the specific approval requirements in paragraphs (i)(1) and (i)(2) of this section:

(A) Where the relevant licensee, controlling U.S. parent, or entity holding a direct or indirect equity and/or voting interest in the licensee or U.S. parent is a “public company,” as defined in §

1.990(d)(9), provided that the foreign holder is an institutional investor that is eligible to report its beneficial ownership interests in the company's voting, equity securities in excess of 5 percent (not to exceed 10 percent) pursuant to Exchange Act Rule 13d-1(b), 17 CFR 240.13d-1(b), or a substantially comparable foreign law or regulation. This presumption shall not apply if the foreign individual, entity or group holding such interests is obligated to report its holdings in the company pursuant to Exchange Act Rule 13d-1(a), 17 CFR 240.13d-1(a), or a substantially comparable foreign law or regulation.

Example. Common carrier applicant ("Applicant") is preparing a petition for declaratory ruling to request Commission approval for foreign ownership of its controlling, U.S.-organized parent ("U.S. Parent") to exceed the 25 percent benchmark in section 310(b)(4) of the Act. Applicant does not currently hold any FCC licenses. Shares of U.S. Parent trade publicly on the New York Stock Exchange. Based on a shareholder survey and a review of its shareholder records, U.S. Parent has determined that its aggregate foreign ownership on any given day may exceed an aggregate 25 percent, including a six percent common stock interest held by a foreign-organized mutual fund ("Foreign Fund"). U.S. Parent has confirmed that Foreign Fund is not currently required to report its interest pursuant to Exchange Act Rule 13d-1(a) and instead is eligible to report its interest pursuant to Exchange Act Rule 13d-1(b). U.S. Parent also has confirmed that Foreign Fund does not hold any other interests in U.S. Parent's equity securities, whether of a class of voting or non-voting securities. Applicant may, but is not required to, request specific approval of Foreign Fund's six percent interest in U.S. Parent.

Note to paragraph (i)(3)(ii)(A): Where an institutional investor holds voting, equity securities that are subject to reporting under Exchange Act Rule 13d-1, 17 CFR 240.13d-1, or a substantially comparable foreign law or regulation, and equity securities that are not subject to such reporting the investor's total capital stock interests may be aggregated and treated as exempt from the 5 percent specific approval requirement in paragraphs (i)(1) and (2) of this section so long as the aggregate amount of the institutional investor's holdings does not exceed ten percent of the company's total capital stock or voting rights and the investor is eligible to certify under Exchange Act Rule 13d-1(b), 17 CFR 240.13d-1(b), or a substantially comparable foreign law or regulation that it has acquired its capital stock interests in the ordinary course of business and not with the purpose nor with the effect of changing or influencing the control of the company. In calculating foreign equity and voting interests, the Commission does not consider convertible interests such as options, warrants and convertible debentures until converted, unless specifically requested by the petitioner, i.e., where the petitioner is requesting approval so those rights can be exercised in a particular case without further Commission approval.

(B) Where the relevant licensee, controlling U.S. parent, or entity holding a direct and/or indirect equity and/or voting interest in the licensee or U.S. parent is a “privately held” corporation, as defined in § 1.990(d)(8), provided that a shareholders’ agreement, or similar voting agreement, prohibits the foreign holder from becoming actively involved in the management or operation of the corporation and limits the foreign holder’s voting and consent rights, if any, to the minority shareholder protections listed in paragraph (i)(5) of this section.

(C) Where the relevant licensee, controlling U.S. parent, or entity holding a direct and/or indirect equity and/or voting interest in the licensee or U.S. parent is “privately held,” as defined in § 1.990(d)(8), and is organized as a limited partnership, limited liability company (“LLC”), or limited liability partnership (“LLP”), provided that the foreign holder is “insulated” in accordance with the criteria specified in § 1.993.

(4) A petitioner may, but is not required to, request specific approval for any other foreign individual or entity that holds, or would hold, a direct and/or indirect equity and/or voting interest in the controlling U.S. parent (for petitions filed under § 1.990(a)(1)) or in the petitioning applicant or licensee (for petitions filed under § 1.990(a)(2)).

(5) The minority shareholder protections referenced in paragraph (i)(3)(ii)(B) of this section consist of the following rights:

(i) The power to prevent the sale or pledge of all or substantially all of the assets of the corporation or a voluntary filing for bankruptcy or liquidation;

(ii) The power to prevent the corporation from entering into contracts with majority shareholders or their affiliates;

(iii) The power to prevent the corporation from guaranteeing the obligations of majority shareholders or their affiliates;

(iv) The power to purchase an additional interest in the corporation to prevent the dilution of the shareholder's pro rata interest in the event that the corporation issues additional instruments conveying shares in the company;

(v) The power to prevent the change of existing legal rights or preferences of the shareholders, as provided in the charter, by-laws or other operative governance documents;

(vi) The power to prevent the amendment of the charter, by-laws or other operative governance documents of the company with respect to the matters described in paragraphs (i)(5)(i) through (v) of this section.

(6) The Commission reserves the right to consider, on a case-by-case basis, whether voting or consent rights over matters other than those listed in paragraph (i)(5) of this section shall be considered permissible minority shareholder protections in a particular case.

(j) For each foreign individual or entity named in response to paragraph (i) of this section, provide the following information:

(1) In the case of an individual, his or her citizenship and principal business(es);

(2) In the case of a business organization:

(i) Its place of organization, type of business organization (*e.g.*, corporation, unincorporated association, trust, general partnership, limited partnership, limited liability company, trust, other (include description of legal entity)), and principal business(es);

(ii) The name of any individual or entity that holds, or would hold, directly and/or indirectly, through one or more intervening entities, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the foreign entity for which the petitioner requests specific approval. Specify for each such interest holder, his or her citizenship (for individuals) or place of legal organization (for entities). Equity interests and voting interests held indirectly shall be calculated in accordance with the principles set forth in § 1.992.

(iii) Where no individual or entity holds, or would hold, directly and/or indirectly, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, the petition shall specify that no individual or entity holds, or would hold, directly and/or indirectly, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the foreign entity for which the petitioner requests specific approval.

(k) Requests for advance approval. The petitioner may, but is not required to, request advance approval in its petition for any foreign individual or entity named in response to paragraph (i) of this section to increase its direct and/or indirect equity and/or voting interests in the controlling U.S. parent of the common carrier or aeronautical radio station licensee, for petitions filed under § 1.990(a)(1), and/or in the common carrier licensee, for petitions filed under § 1.990(a)(2), above the percentages specified in response to paragraph (i) of this section. Requests for advance approval shall be made as follows:

(1) Petitions filed under § 1.990(a)(1). Where a foreign individual or entity named in response to paragraph (i) of this section holds, or would hold upon consummation of any transactions described in the petition, a de jure or de facto controlling interest in the controlling U.S. parent, the petitioner may request advance approval in its petition for the foreign individual or entity to increase its interests, at some future time, up to any amount, including 100 percent of the direct and/or indirect equity and/or voting interests in the U.S. parent. The petitioner shall specify for the named controlling foreign individual(s) or entity(ies) the maximum percentages of equity and/or voting interests for which advance approval is sought or, in lieu of a specific amount, state that the petitioner requests advance approval for the named controlling foreign individual or entity to increase its interests up to and including 100 percent of the U.S. parent's direct and/or indirect equity and/or voting interests.

(2) Petitions filed under § 1.990(a)(1) and/or § 1.990(a)(2). Where a foreign individual or entity named in response to paragraph (i) of this section holds, or would hold upon consummation of any transactions described in the petition, a non-controlling interest in the controlling U.S. parent

of the licensee, for petitions filed under § 1.990(a)(1), or in the licensee, for petitions filed under § 1.990(a)(2), the petitioner may request advance approval in its petition for the foreign individual or entity to increase its interests, at some future time, up to any non-controlling amount not to exceed 49.99 percent. The petitioner shall specify for the named foreign individual(s) or entity(ies) the maximum percentages of equity and/or voting interests for which advance approval is sought or, in lieu of a specific amount, shall state that the petitioner requests advance approval for the named foreign individual(s) or entity(ies) to increase their interests up to and including a non-controlling 49.99 percent equity and/or voting interest in the licensee, for petitions filed under § 1.990(a)(2), or in the controlling U.S. parent of the licensee, for petitions filed under § 1.990(a)(1).

§ 1.992 How to calculate indirect equity and voting interests.

(a) The criteria specified in this section shall be used for purposes of calculating indirect equity and voting interests under § 1.991.

(b)(1) Equity interests held indirectly in the licensee and/or controlling U.S. parent. Equity interests that are held by an individual or entity indirectly through one or more intervening entities shall be calculated by successive multiplication of the equity percentages for each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier.

Example. Assume that a foreign individual holds a non-controlling 30 percent equity and voting interest in U.S.-organized Corporation A which, in turn, holds a non-controlling 40 percent equity and voting interest in U.S.-organized Parent Corporation B. The foreign individual's equity interest in U.S.-organized Parent Corporation B would be calculated by multiplying the foreign individual's equity interest in U.S.-organized Corporation A by that entity's equity interest in U.S.-organized Parent Corporation B. The foreign individual's equity interest in U.S.-organized Parent Corporation B would be calculated as 12 percent ($30\% \times 40\% = 12\%$). The result would be the same even if U.S.-organized Corporation A held a de facto controlling interest in U.S.-organized Parent Corporation B.

(2) Voting interests held indirectly in the licensee and/or controlling U.S. parent. Voting interests that are held by any individual or entity indirectly through one or more intervening entities will be determined depending upon the type of business organization(s) in which the individual or entity holds a voting interest as follows:

(i) Voting interests that are held through one or more intervening corporations shall be calculated by successive multiplication of the voting percentages for each link in the vertical ownership chain, except that wherever the voting interest for any link in the chain is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

Example. Assume that a foreign individual holds a non-controlling 30 percent equity and voting interest in U.S.-organized Corporation A which, in turn, holds a controlling 70 percent equity and voting interest in U.S.-organized Parent Corporation B. Because U.S.-organized

Corporation A's 70 percent voting interest in U.S.-organized Parent Corporation B constitutes a controlling interest, it is treated as a 100 percent interest. The foreign individual's 30 percent voting interest in U.S.-organized Corporation A would flow through in its entirety to U.S. Parent Corporation B and thus be calculated as 30 percent ($30\% \times 100\% = 30\%$).

(ii) Voting interests that are held through one or more intervening partnerships shall be calculated depending upon whether the individual or entity holds a general partnership interest, an uninsulated partnership interest, or an insulated partnership interest as specified in paragraphs (b)(2)(ii)(A) and (B) of this section.

(A) General partnership and other uninsulated partnership interests. A general partner and uninsulated partner shall be deemed to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. A partner shall be treated as uninsulated unless the limited partnership agreement, limited liability partnership agreement, or other operative agreement satisfies the insulation criteria specified in § 1.993.

Note to paragraph (b)(2)(ii)(A): The Commission presumes that a general partner of a general partnership or limited partnership has a controlling interest in the partnership. A general partner shall in all cases be deemed to hold an uninsulated interest in the partnership.

(B) Insulated partnership interests. A partner of a limited partnership (other than a general partner) or partner of a limited liability partnership that satisfies the insulation criteria specified in § 1.993 shall be treated as an insulated partner and shall be deemed to hold a voting interest in the partnership that is equal to the partner's equity interest.

(iii) Voting interests that are held through one or more intervening limited liability companies shall be calculated depending upon whether the individual or entity is a non-member manager, an uninsulated member or an insulated member as specified in paragraphs (b)(2)(iii)(A) and (B) of this section.

(A) Non-member managers and uninsulated membership interests. A non-member manager and an uninsulated member of a limited liability company shall be deemed to hold the same voting interest as the limited liability company holds in the company situated in the next lower tier of the vertical ownership chain. A member shall be treated as uninsulated unless the limited liability company agreement satisfies the insulation criteria specified in § 1.993.

(B) Insulated membership interests. A member of a limited liability company that satisfies the insulation criteria specified in § 1.993 shall be treated as an insulated member and shall be deemed to hold a voting interest in the limited liability company that is equal to the member's equity interest.

§ 1.993 Insulation criteria for interests in limited partnerships, limited liability partnerships, and limited liability companies.

(a) A limited partner of a limited partnership and a partner of a limited liability partnership shall be treated as uninsulated within the meaning of § 1.992(b)(2)(ii)(A) unless the partner is prohibited by the limited partnership agreement, limited liability partnership agreement, or other operative agreement from, and in fact is not engaged in, active involvement in the management

or operation of the partnership and only the usual and customary investor protections are contained in the partnership agreement or other operative agreement. These criteria apply to any relevant limited partnership or limited liability partnership, whether it is the licensee, a controlling U.S.-organized parent, or any partnership situated above them in the vertical chain of ownership.

(b) A member of a limited liability company shall be treated as uninsulated for purposes of § 1.992(b)(2)(iii)(A) unless the member is prohibited by the limited liability company agreement from, and in fact is not engaged in, active involvement in the management or operation of the company and only the usual and customary investor protections are contained in the agreement. These criteria apply to any relevant limited liability company, whether it is the licensee, a controlling U.S.-organized parent, or any limited liability company situated above them in the vertical chain of ownership.

(c) The usual and customary investor protections referred to in paragraphs (a) and (b) of this section shall consist of:

(1) The power to prevent the sale or pledge of all or substantially all of the assets of the limited partnership, limited liability partnership, or limited liability company or a voluntary filing for bankruptcy or liquidation;

(2) The power to prevent the limited partnership, limited liability partnership, or limited liability company from entering into contracts with majority investors or their affiliates;

(3) The power to prevent the limited partnership, limited liability partnership, or limited liability company from guaranteeing the obligations of majority investors or their affiliates;

(4) The power to purchase an additional interest in the limited partnership, limited liability partnership, or limited liability company to prevent the dilution of the partner's or member's pro rata interest in the event that the limited partnership, limited liability partnership, or limited liability company issues additional instruments conveying interests in the partnership or company;

(5) The power to prevent the change of existing legal rights or preferences of the partners, members, or managers as provided in the limited partnership agreement, limited liability partnership agreement, or limited liability company agreement, or other operative agreement;

(6) The power to vote on the removal of a general partner, managing partner, managing member, or other manager in situations where such individual or entity is subject to bankruptcy, insolvency, reorganization, or other proceedings relating to the relief of debtors; adjudicated insane or incompetent by a court of competent jurisdiction (in the case of a natural person); convicted of a felony; or otherwise removed for cause, as determined by an independent party;

(7) The power to prevent the amendment of the limited partnership agreement, limited liability partnership agreement, or limited liability company agreement, or other organizational

documents of the partnership or limited liability company with respect to the matters described in paragraphs (c)(1) through (6) of this section.

(d) The Commission reserves the right to consider, on a case-by-case basis, whether voting or consent rights over matters other than those listed in paragraph (c) of this section shall be considered usual and customary investor protections in a particular case.

§ 1.994 Routine terms and conditions.

Foreign ownership rulings issued pursuant to §§ 1.990 et seq. shall be subject to the following terms and conditions, except as otherwise specified in a particular ruling:

(a)(1) Aggregate allowance for rulings issued under § 1.990(a)(1). In addition to the foreign ownership interests approved specifically in a licensee’s declaratory ruling issued pursuant to § 1.990(a)(1), the controlling U.S.-organized parent named in the ruling (or a U.S.-organized successor-in-interest formed as part of a pro forma reorganization) may be 100 percent owned, directly and/or indirectly through one or more U.S- or foreign-organized entities, on a going-forward basis (*i.e.*, after issuance of the ruling) by other foreign investors without prior Commission approval. This “100 percent aggregate allowance” is subject to the requirement that the licensee seek and obtain Commission approval before any foreign individual, entity, or “group” not previously approved acquires, directly and/or indirectly, more than five percent of the U.S. parent’s outstanding capital stock (equity) and/or voting stock, or a controlling interest, with the exception of any foreign individual, entity, or “group” that acquires an equity and/or voting interest of ten percent or less, provided that the interest is exempt under § 1.991(i)(3).

(2) Aggregate allowance for rulings issued under § 1.990(a)(2). In addition to the foreign ownership interests approved specifically in a licensee’s declaratory ruling issued pursuant to § 1.990(a)(2), the licensee(s) named in the ruling (or a U.S.-organized successor-in-interest formed as part of a pro forma reorganization) may be 100 percent owned on a going forward basis (i.e., after issuance of the ruling) by other foreign investors holding interests in the licensee indirectly through U.S.-organized entities that do not control the licensee, without prior Commission approval. This “100 percent aggregate allowance” is subject to the requirement that the licensee seek and obtain Commission approval before any foreign individual, entity, or “group” not previously approved acquires directly and/or indirectly, through one or more U.S.-organized entities that do not control the licensee, more than five percent of the licensee’s outstanding capital stock (equity) and/or voting stock, with the exception of any foreign individual, entity, or “group” that acquires an equity and/or voting interest of ten percent or less, provided that the interest is exempt under § 1.991(i)(3). Foreign ownership interests held directly in a licensee shall not be permitted to exceed an aggregate 20 percent of the licensee’s equity and/or voting interests.

Note to paragraph (a): Licensees have an obligation to monitor and stay ahead of changes in foreign ownership of their controlling U.S.-organized parent companies (for rulings issued pursuant to § 1.990(a)(1)) and/or in the licensee itself (for rulings issued pursuant to § 1.990(a)(2)), to ensure that the licensee obtains Commission approval before a change in foreign ownership renders the licensee out of compliance with the terms and conditions of its declaratory ruling(s) or the Commission’s rules. Licensees, their controlling parent companies, and other

entities in the licensee's vertical ownership chain may need to place restrictions in their bylaws or other organizational documents to enable the licensee to ensure compliance with the terms and conditions of its declaratory ruling(s) and the Commission's rules.

Example 1 (for rulings issued under § 1.990(a)(1)). U.S. Corp. files an application for a common carrier license. U.S. Corp. is wholly owned and controlled by U.S. Parent, which is a newly formed, privately held Delaware corporation in which no single shareholder has de jure or de facto control. A shareholders' agreement provides that a five-member board of directors shall govern the affairs of the company; five named shareholders shall be entitled to one seat and one vote on the board; and all decisions of the board shall be determined by majority vote. The five named shareholders and their respective equity interests are as follows: Foreign Entity A, which is wholly owned and controlled by a foreign citizen (5 percent); Foreign Entity B, which is wholly owned and controlled by a foreign citizen (10 percent); Foreign Entity C, a foreign public company with no controlling shareholder (20 percent); Foreign Entity D, a foreign pension fund that is controlled by a foreign citizen and in which no individual or entity has a pecuniary interest exceeding one percent (21 percent); and U.S. Entity E, a U.S. public company with no controlling shareholder (25 percent). The remaining 19 percent of U.S. Parent's shares are held by three foreign-organized entities as follows: F (4 percent), G (6 percent), and H (9 percent). Under the shareholders' agreement, voting rights of F, G, and H are limited to the minority shareholder protections listed in §1.991(i)(5). Further, the agreement expressly prohibits G and H from becoming actively involved in the management or operation of U.S. Parent and U.S. Corp.

As required by the rules, U.S. Corp. files a section 310(b)(4) petition concurrently with its application. The petition identifies and requests specific approval for the ownership interests held in U.S. Parent by Foreign Entity A and its sole shareholder (5 percent equity and 20 percent voting interest); Foreign Entity B and its sole shareholder (10 percent equity and 20 percent voting interest), Foreign Entity C (20 percent equity and 20 percent voting interest), and Foreign Entity D (21 percent equity and 20 percent voting interest) and its fund manager (20 percent voting interest). The Commission's ruling specifically approves these foreign interests. The ruling also provides that, on a going-forward basis, U.S. Parent may be 100 percent owned in the aggregate, directly and/or indirectly, by other foreign investors, subject to the requirement that U.S. Corp. seek and obtain Commission approval before any previously unapproved foreign investor acquires more than five percent of U.S. Parent's equity and/or voting interests, or a controlling interest, with the exception of any foreign investor that acquires an equity and/or voting interest of ten percent or less, provided that the interest is exempt under § 1.991(i)(3).

In this case, foreign entities F, G, and H would each be considered a previously unapproved foreign investor (along with any new foreign investors). However, prior approval for F, G and H would only apply to an increase of F's interest above five percent (because the ten percent exemption under § 1.991(i)(3) does not apply to F) or to an increase of G's or H's interest above ten percent (because G and H do qualify for this exemption). U.S. Corp. would also need Commission approval before Foreign Entity D appoints a new fund manager that is a non-U.S. citizen and before Foreign Entities A, B, C, or D increase their respective equity and/or voting interests in U.S. Parent, unless the petition previously sought and obtained Commission approval for such increases (up to non-controlling 49.99 percent interests). (See § 1.991(k)(2).) Foreign shareholders of Foreign Entity C and U.S. Entity E would also be considered previously

unapproved foreign investors. Thus, Commission approval would be required before any foreign shareholder of Foreign Entity C or U.S. Entity E acquires (1) a controlling interest in either company; or (2) a non-controlling equity and/or voting interest in either company that, when multiplied by the company's equity and/or voting interests in U.S. Parent, would exceed 5 percent of U.S. Parent's equity and/or voting interests, unless the interest is exempt under § 1.991(i)(3).

Example 2 (for rulings issued under § 1.990(a)(2)). Assume that the following three U.S.-organized entities hold non-controlling equity and voting interests in common carrier Licensee, which is a privately held corporation organized in Delaware: U.S. corporation A (30 percent); U.S. corporation B (30 percent); and U.S. corporation C (40 percent). Licensee's shareholders are wholly owned by foreign individuals X, Y, and Z, respectively. Licensee has received a declaratory ruling under § 1.990(a)(2) specifically approving the 30 percent foreign ownership interests held in Licensee by each of X and Y (through U.S. corporation A and U.S. corporation B, respectively) and the 40 percent foreign ownership interest held in Licensee by Z (through U.S. corporation C). On a going-forward basis, Licensee may be 100 percent owned in the aggregate by X, Y, Z, and other foreign investors holding interests in Licensee indirectly, through U.S.-organized entities that do not control Licensee, subject to the requirement that Licensee obtain Commission approval before any previously unapproved foreign investor acquires more than five percent of Licensee's equity and/or voting interests, with the exception of any foreign investor that acquires an equity and/or voting interest of ten percent or less, provided that the interest is exempt under § 1.991(i)(3). In this case, any foreign investor other than X, Y, and Z would be considered a previously unapproved foreign investor. Licensee would also need Commission approval before X, Y, or Z increases its equity and/or voting

interests in Licensee unless the petition previously sought and obtained Commission approval for such increases (up to non-controlling 49.99 percent interests). (See § 1.991(k)(2).)

(b) Subsidiaries and affiliates. A foreign ownership ruling issued to a licensee shall cover it and any U.S.-organized subsidiary or affiliate, as defined in § 1.990(d), whether the subsidiary or affiliate existed at the time the ruling was issued or was formed or acquired subsequently, provided that the foreign ownership of the licensee named in the ruling, and of the subsidiary and/or affiliate, remains in compliance with the terms and conditions of the licensee's ruling and the Commission's rules.

(1) The subsidiary or affiliate of a licensee named in a foreign ownership ruling issued under § 1.990(a)(1) may rely on that ruling for purposes of filing its own application for an initial common carrier or aeronautical license or spectrum leasing arrangement, or an application to acquire such license or spectrum leasing arrangement by assignment or transfer of control provided that the subsidiary or affiliate, and the licensee named in the ruling, each certifies in the application that its foreign ownership is in compliance with the terms and conditions of the foreign ownership ruling and the Commission's rules.

(2) The subsidiary or affiliate of a licensee named in a foreign ownership ruling issued under § 1.990(a)(2) may rely on that ruling for purposes of filing its own application for an initial common carrier radio station license or spectrum leasing arrangement, or an application to acquire such license or spectrum leasing arrangement by assignment or transfer of control provided that the subsidiary or affiliate, and the licensee named in the ruling, each certifies in the

application that its foreign ownership is in compliance with the terms and conditions of the foreign ownership ruling and the Commission's rules.

(3) The certifications required by paragraphs (b)(1) and (b)(2) of this section shall also include the citation(s) of the relevant ruling(s) (*i.e.*, the DA or FCC Number, FCC Record citation when available, and release date).

(c) Insertion of new controlling foreign-organized companies. (1) Where a licensee's foreign ownership ruling specifically authorizes a named, foreign investor to hold a controlling interest in the licensee's controlling U.S.-organized parent, for rulings issued under § 1.990(a)(1), or in an intervening U.S.-organized entity that does not control the licensee, for rulings issued under § 1.990(a)(2), the ruling shall permit the insertion of new, controlling foreign-organized companies in the vertical ownership chain above the controlling U.S. parent, for rulings issued under § 1.990(a)(1), or above an intervening U.S.-organized entity that does not control the licensee, for rulings issued under § 1.990(a)(2), without prior Commission approval provided that any new foreign-organized company(ies) are under 100 percent common ownership and control with the foreign investor approved in the ruling.

(2) Where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval pursuant to paragraph (c)(1) of this section, the licensee shall file a letter to the attention of the Chief, International Bureau, within 30 days after the insertion of the new, foreign-organized entity. The letter must include the name of the new, foreign-organized entity

and a certification by the licensee that the entity complies with the 100 percent common ownership and control requirement in paragraph (c)(1) of this section. The letter must also reference the licensee's foreign ownership ruling(s) by IBFS File No. and FCC Record citation, if available. This letter notification need not be filed if the ownership change is instead the subject of a pro forma application or pro forma notification already filed with the Commission pursuant to the relevant wireless radio service rules or satellite radio service rules applicable to the licensee.

(3) Nothing in this section is intended to affect any requirements for prior approval under 47 U.S.C. 310(d) or conditions for forbearance from the requirements of 47 U.S.C. 310(d) pursuant to 47 U.S.C. 160.

Example (for rulings issued under § 1.990(a)(1)). Licensee receives a foreign ownership ruling under § 1.990(a)(1) that authorizes its controlling, U.S.-organized parent ("U.S. Parent A") to be wholly owned and controlled by a foreign-organized company ("Foreign Company"). Foreign Company is minority owned (20 percent) by U.S.-organized Corporation B, with the remaining 80 percent controlling interest held by Foreign Citizen C. After issuance of the ruling, Foreign Company forms a wholly-owned, foreign-organized subsidiary ("Foreign Subsidiary") to hold all of Foreign Company's shares in U.S. Parent A. There are no other changes in the direct or indirect foreign ownership of U.S. Parent A. The insertion of Foreign Subsidiary into the vertical ownership chain between Foreign Company and U.S. Parent A would not require prior Commission approval, except for any approval otherwise required pursuant to section 310(d) of

the Communications Act and not exempt therefrom as a pro forma transfer of control under § 1.948(c)(1).

Example (for rulings issued under § 1.990(a)(2)). An applicant for a common carrier license receives a foreign ownership ruling under § 1.990(a)(2) that authorizes a foreign-organized company (“Foreign Company”) to hold a non-controlling 44 percent equity and voting interest in the applicant through Foreign Company’s wholly-owned, U.S.-organized subsidiary, U.S. Corporation A, which holds the non-controlling 44 percent interest directly in the applicant. The remaining 56 percent of the applicant’s equity and voting interests are held by its controlling U.S.-organized parent, which has no foreign ownership. After issuance of the ruling, Foreign Company forms a wholly-owned, foreign-organized subsidiary to hold all of Foreign Company’s shares in U.S. Corporation A. There are no other changes in the direct or indirect foreign ownership of U.S. Corporation A. The insertion of the foreign-organized subsidiary into the vertical ownership chain between Foreign Company and U.S. Corporation A would not require prior Commission approval.

(d) Insertion of new non-controlling foreign-organized companies. (1) Where a licensee’s foreign ownership ruling specifically authorizes a named, foreign investor to hold a non-controlling interest in the licensee’s controlling U.S.-organized parent, for rulings issued under § 1.990(a)(1), or in an intervening U.S.-organized entity that does not control the licensee, for rulings issued under § 1.990(a)(2), the ruling shall permit the insertion of new, foreign-organized companies in the vertical ownership chain above the controlling U.S. parent, for rulings issued under § 1.990(a)(1), or above an intervening U.S.-organized entity that does not control the

licensee, for rulings issued under § 1.990(a)(2), without prior Commission approval provided that any new foreign-organized company(ies) are under 100 percent common ownership and control with the foreign investor approved in the ruling.

Note to paragraph (d)(1): Where a licensee has received a foreign ownership ruling under § 1.990(a)(2) and the ruling specifically authorizes a named, foreign investor to hold a non-controlling interest directly in the licensee (subject to the 20 percent aggregate limit on direct foreign investment), the ruling shall permit the insertion of new, foreign-organized companies in the vertical ownership chain of the approved foreign investor without prior Commission approval provided that any new foreign-organized companies are under 100 percent common ownership and control with the approved foreign investor.

Example (for rulings issued under § 1.990(a)(1)). Licensee receives a foreign ownership ruling under § 1.990(a)(1) that authorizes a foreign-organized company (“Foreign Company”) to hold a non-controlling 30 percent equity and voting interest in Licensee’s controlling, U.S.-organized parent (“U.S. Parent A”). The remaining 70 percent equity and voting interests in U.S. Parent A are held by U.S.-organized entities which have no foreign ownership. After issuance of the ruling, Foreign Company forms a wholly-owned, foreign-organized subsidiary (“Foreign Subsidiary”) to hold all of Foreign Company’s shares in U.S. Parent A. There are no other changes in the direct or indirect foreign ownership of U.S. Parent A. The insertion of Foreign Subsidiary into the vertical ownership chain between Foreign Company and U.S. Parent A would not require prior Commission approval.

Example (for rulings issued under §1.990(a)(2)). Licensee receives a foreign ownership ruling under § 1.990(a)(2) that authorizes a foreign-organized entity (“Foreign Company”) to hold approximately 24 percent of Licensee’s equity and voting interests, through Foreign Company’s non-controlling 48 percent equity and voting interest in a U.S.-organized entity, U.S. Corporation A, which holds a non-controlling 49 percent equity and voting interest directly in Licensee. (A U.S. citizen holds the remaining 52 percent equity and voting interests in U.S. Corporation A, and the remaining 51 percent equity and voting interests in Licensee are held by its U.S.-organized parent, which has no foreign ownership. After issuance of the ruling, Foreign Company forms a wholly-owned, foreign-organized subsidiary (“Foreign Subsidiary”) to hold all of Foreign Company’s shares in U.S. Corporation A. There are no other changes in the direct or indirect foreign ownership of U.S. Corporation A. The insertion of Foreign Subsidiary into the vertical ownership chain between Foreign Company and U.S. Corporation A would not require prior Commission approval.

(2) Where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval pursuant to paragraph (d)(1) of this section, the licensee shall file a letter to the attention of the Chief, International Bureau, within 30 days after the insertion of the new, foreign-organized entity. The letter must include the name of the new, foreign-organized entity and a certification by the licensee that the entity complies with the 100 percent common ownership and control requirement in paragraph (d)(1) of this section. The letter must also reference the licensee’s foreign ownership ruling(s) by IBFS File No. and FCC Record citation, if available. This letter notification need not be filed if the ownership change is instead the

subject of a pro forma application or pro forma notification already filed with the Commission pursuant to the relevant wireless radio service rules or satellite radio service rules applicable to the licensee.

(e) New petition for declaratory ruling required. A licensee that has received a foreign ownership ruling, including a U.S.-organized successor-in-interest to such licensee formed as part of a pro forma reorganization, or any subsidiary or affiliate relying on such licensee's ruling pursuant to paragraph (b) of this section, shall file a new petition for declaratory ruling under § 1.990 to obtain Commission approval before its foreign ownership exceeds the routine terms and conditions of this section, and/or any specific terms or conditions of its ruling.

(f)(1) Continuing compliance. If at any time the licensee, including any successor-in-interest and any subsidiary or affiliate as described in paragraph (b) of this section, knows, or has reason to know, that it is no longer in compliance with its foreign ownership ruling or the Commission's rules relating to foreign ownership, it shall file a statement with the Commission explaining the circumstances within 30 days of the date it knew, or had reason to know, that it was no longer in compliance therewith. Subsequent actions taken by or on behalf of the licensee to remedy its non-compliance shall not relieve it of the obligation to notify the Commission of the circumstances (including duration) of non-compliance. Such licensee and any controlling companies, whether U.S.- or foreign-organized, shall be subject to enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the investor's direct and/or indirect interests in such entities.

(2) Any individual or entity that, directly or indirectly, creates or uses a trust, proxy, power of attorney, or any other contract, arrangement, or device with the purpose or effect of divesting itself, or preventing the vesting, of an equity interest or voting interest in the licensee, or in a controlling U.S. parent company, as part of a plan or scheme to evade the application of the Commission's rules or policies under section 310(b) shall be subject to enforcement action by the Commission, including an order requiring divestiture of the investor's direct and/or indirect interests in such entities.

PART 25 – SATELLITE COMMUNICATIONS

4. The authority citation for part 25 is revised to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309, 310 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, 310 and 332, unless otherwise noted.

5. Section 25.105 is added to read as follows:

§ 25.105 Citizenship.

The rules that establish the requirements and conditions for obtaining the Commission's prior approval of foreign ownership in common carrier licensees that would exceed the 20 percent limit in section 310(b)(3) of the Communications Act (47 U.S.C. 310(b)(3)) and/or the 25 percent benchmark in section 310(b)(4) of the Act (47 U.S.C. 310(b)(4)) are set forth in §§ 1.990 through 1.994 of this chapter.

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